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MINUTES OF THE REGULAR MEETING BOARD OF ZONING APPEALS June 8, 2006 7:30 P.M. CITY COUNCIL CHAMBERS, 10TH FLOOR CITY HALL

I. ROLL CALL

The meeting was called to order by Chairman Burgess at 7:30 p.m. Chairman Burgess read the BZA introduction. Roll call was taken.

Present:

B. Burgess G. Hilts E. Horne B. McGrain G. Swix

A. Frederick M. Mayberry

Absent: F. Lain J. Siebold

Staff: S. Stachowiak

A. A quorum of at least five members was present, allowing voting action to be taken at the meeting.

II APPROVAL OF AGENDA

B. McGrain moved, seconded by A. Frederick to approve the agenda with the addition of "Excused Absences" under new business and "Committee of the Whole" under approval of the agenda. On a voice vote, the motion carried 7-0.

Committee of the Whole - Discussion on telecommunication tower variances

Mr. Burgess questioned whether the discussion about the cell phone tower variances is limited to the height or if the other aspects of the tower can be discussed. He said that he is concerned about why two new cell phone towers are being erected within a short distance of each other.

The consensus of the Board was that only the height was being decided upon by the BZA and therefore, the discussion would be limited accordingly. Mr. Frederick stated that the Planning Board is currently considering Special Land Use permits for both towers which is the permit that determines if the tower itself can be erected in the location proposed.

III. HEARINGS/ACTION

A. BZA-3873.06, 3800 Block of S. Waverly Road

This is a variance request by Haley Law Firm on behalf of Nextel Communications. The applicant is requesting a variance to construct a 106-foot high, monopole, telecommunications tower on "Outlot D" located immediately west of 3400 S. Waverly Road.

Section 1268.09 of the Zoning Ordinance permits a maximum height of forty (40) feet in the "F" Commercial District. Therefore, a variance of 66 feet to the height limitation is requested. Staff recommended approval of the variance request, with 6 conditions, on a finding that the variance would be consistent with the practical difficulty criteria of Section 1244.06 (c) and the impact criteria of Section 1244.06 (e), as detailed in the staff report for this application.

Ms. Stachowiak also stated that the proposed barbed wire along the top of the fence will not be permitted because of its close proximity to the adjoining residential parcel of land. She also stated that the area to the west of the proposed tower is wooded and therefore, not many additional trees will be required.

T.J. Garrett, Haley Law Firm, spoke in support of the request. Ms. Garrett stated that the barbed wire can be removed and additional landscaping can be added. She also stated that a 100 foot tower is necessary to accommodate the co-locations which must be 10 feet apart and above the trees in the area which are 60-70 feet high.

Mr. Swix stated that there seems to be good cell phone reception in the area. He questioned why the tower is necessary.

Ms. Garrett stated that it is a capacity issue. She said that because there is so much traffic in the area, a lot of calls are dropped.

Mr. Frederick stated that they cannot co-locate because they need this area and each tower can only handle so many cell phone.

Mr. Burgess asked if anyone else wished to address the Board. Seeing none, the Board moved into the Committee of the Whole.

Mr. Frederick stated that if the Planning Board does not issue the Special Land Use permit, the variance will be irrelevant and vice-versa.

B. McGrain moved to approve BZA-3873.06, a variance of 66 feet to the height limitation for a new cell phone tower on Outlot D located immediately west of 3400 S. Waverly, on a finding that the variance would be consistent with the practical difficulty criteria of Section 1244.06 (c) and the impact criteria of Section 1244.06 (e), as detailed in the staff report for this application, with the following conditions:

- 1. The tower shall be "monopole" type.
- 2. The proposed monopole tower provide for a co-location of antennas.
- 3. The tower shall not interfere with telemetry communications of local hospitals and emergency services.
- 4. Landscaping be added around the base of the tower to buffer the view of the base from surrounding properties.
- 5. The tower be appropriately accessible and fenced for security.
- 6. The tower and any mechanical equipment shed be consolidated and placed in locations as far away from surrounding residential units so as to minimize the visual impact.

Seconded by G. Hilts.

VOTE	YEA	NAY
Swix	Х	
McGrain	х	
Hilts	х	
Mayberry	х	
Horne	X	
Frederick	X	
Burgess	X	

Motion carried, 7-0, BZA-3873.06, was approved.

B. <u>BZA-3874.06, 5601 S. Waverly Road</u>

This is a variance request by Haley Law Firm on behalf of T-Mobile. The applicant is requesting a variance to construct a 125-foot high, monopole, telecommunications tower behind the church at 5601 S. Waverly Road. Section 1268.09 of the Zoning Ordinance permits a maximum height of forty (35) feet in the "B" Residential District. Therefore, a variance of 66 feet to the height limitation is requested. Staff recommended approval of the variance request, with 6 conditions, on a finding that the variance would be consistent with the practical difficulty criteria of Section 1244.06 (c) and the impact criteria of Section 1244.06 (e), as detailed in the staff report for this application.

Mr. Swix asked why T-Mobile and Nextel are both putting up new towers. He asked why they are not required to co-locate.

Mr. Frederick stated that they cannot co-locate because the two towers serve different purposes. He said that the applicant has propogation charts that were shown to the Planning Board, depicting the coverage areas.

Mr. McGrain asked why the applicant does not co-locate on the Consumer's Energy towers to the north.

Wally Haley, Haley Law Firm, spoke in support of the request. Mr. Haley stated that they wish they could locate on the Consumer's Energy towers but they no longer allow colocations. They decided to put the new tower next to the Consumer's Energy towers because they pale in comparison.

Mr. Haley stated that the two proposed towers are a little over 1 mile apart. He stated that this is a coverage site, unlike the one on Waverly and Holmes which is a capacity site. With the coverage site, they are trying to cover residences and possibly replace land lines.

Mr. Frederick stated that with this tower, they are dealing with signal strength rather than capacity.

Mr. Haley stated that Mr. Frederick was correct.

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Mr. Burgess asked if anyone else wished to address the Board. Seeing none, the Board moved into the Committee of the Whole.

Mr. Horne stated that the city used to try to get rid of telephone poles and now we are getting more monopoles.

A. Frederick moved to approve BZA-3874.06, a variance of 90 feet to the height limitation for a new cell phone tower at 5601 S. Waverly, on a finding that the variance would be consistent with the practical difficulty criteria of Section 1244.06 (c) and the impact criteria of Section 1244.06 (e), as detailed in the staff report for this application, with the following conditions:

- 1. The tower shall be "monopole" type.
- 2. The proposed monopole tower provide for a co-location of antennas.
- 3. The tower shall not interfere with telemetry communications of local hospitals and emergency services.
- 4. Landscaping be added around the base of the tower to buffer the view of the base from surrounding properties.
- 5. The tower be appropriately accessible and fenced for security.
- 6. The tower and any mechanical equipment shed be consolidated and placed in locations as far away from surrounding residential units so as to minimize the visual impact.

Seconded by B. McGrain.

VOTE	YEA	NAY
Swix	х	
McGrain	х	
Hilts	х	
Mayberry	х	
Horne	х	
Frederick	х	
Burgess	Х	

Motion carried, 7-0, BZA-3874.06, was approved.

A. <u>BZA-3875.06, 1020 S. Washington Avenue</u>

This is a variance request by the St. Vincent De Paul Society Thrift Store. The applicant is requesting a variance to construct a new ground pole sign at 1020 S. Washington Avenue that would be 45 square feet in area, 15 feet in height and

would have a setback of 10 feet from the Washington Avenue front property line. Section 1442.12(h)(5)(B) of the Sign Ordinance requires a 15 foot setback for a sign of these dimensions. Therefore, a variance of 5 feet to the setback requirement is requested. Staff recommended approval of the variance request on a finding that the variance would be consistent with the practical difficulty criteria of Section 1244.06 (c) and the impact criteria of Section 1244.06 (e), as detailed in the staff report for this application.

Phil Whipple, President of St. Vincent DePaul Society, spoke in support of the request. Mr. Whipple showed the Board pictures of what the results would be to parking area if the sign were to be located at the required setback. He stated that they need good signage so that people can locate the business and all proceeds from sales go back into the community.

Mr. Burgess asked if anyone else wished to address the Board. Seeing none, the Board moved into the Committee of the Whole.

Mr. Frederick stated that he could not support the request because the applicant could place the sign further back on the lot and have it a lot taller so that it could be seen by motorists.

The other board members agreed that the applicant had a practical difficulty involving the layout of the parking lot, the location of the building in relation to the front lot line and the vast amount of trees along S. Washington Avenue that would warrant a 5 foot variance.

E. Horne moved to approve BZA-3875.06, a variance of 5 feet to the setback requirement for a 45 square foot ground sign at 1020 S. Washington Avenue, on a finding that the variance would be consistent with the practical difficulty criteria of Section 1244.06 (c) and the impact criteria of Section 1244.06 (e), as detailed in the staff report for this application. Seconded by M. Mayberry.

VOTE	YEA	NAY
Swix	х	
McGrain	х	
Hilts	х	
Mayberry	х	
Horne	х	
Frederick		х
Burgess	Х	

Motion carried, 6-1, BZA-3875.06, was approved.

VI. <u>OLD BUSINESS</u>

- A. Rules of Procedure No action
- B. BZA-3817.04, 1014 S. Pennsylvania Avenue No action

VII. PUBLIC COMMENT - None

VIII. APPROVAL OF MINUTES

A. <u>Minutes of Regular Meeting held May 11, 2006</u>

B. McGrain moved, seconded by G. Swix to approve the minutes of May 11, 2006, as printed. On a voice vote, the motion carried unanimously, 7-0.

IX. <u>NEW BUSINESS</u>

A. Excused Absences

E. Horne moved, seconded by A. Frederick to grant an excused absent to F. Lain for the June 8, 2006 meeting. On a voice vote, the motion carried unanimously, 7-0.

B. Mr. Frederick stated that there are still illegal signs up at 5031 S. Cedar Street.

X. ADJOURNMENT AT 8:30 p.m.

Respectfully submitted,
Susan Stachowiak, Zoning Administrator